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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement submitted by International Educational Development, Inc., a non-governmental organization on the Roster

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[14 April 1998]

1. Self-determination is deeply rooted in the notions of human dignity and human rights. Self-determination means that a nation can decide its own destiny freely. Self-determination allows people to preserve and transmit their national identity and to guarantee their participation the national decision-making process. The primacy of the concept of self-determination is exemplified by its position as the first article of the Covenants on International Human Rights and the observation of the Human Rights Committee that self-determination is a prerequisite to the enjoyment of other human rights. The link between self-determination and human rights is also established in the Helsinki Act.

2. The enjoyment of individual rights presupposes the realization of external self-determination because if a people is oppressed, individuals cannot really be free to exercise their basic rights and freedoms. When people are subject to oppression they are not in a position to have any of their individual rights fully protected. As George Selle, the prominent French international lawyer, stated in 1957: "Tyranny, absolutism and dictatorship are both a violation of the rights of the individual and an infringement of the right of the people." The purpose of self-determination is to protect communities from oppression and to empower them. The intervention of the United Nations to protect the Kurds in Iraq is also a manifestation of the realization that systematic and gross violation of the group rights of an entity within a State is a threat to international peace.

3. Self-determination is synonymous with the principle that the government must be based on the consent of the governed. Self-determination and democracy are two sides of the same coin. As Professor Chen has observed: incumbent upon the right of people to elect their rulers is the equal right to determine the polity in which the people choose to live. Further, democracy requires a society mobilized for political action. For Rousseau, the democratic State was itself a community and democratic deliberations could get nowhere unless citizens were sufficiently identified with the entire polity to think only of the public interest. As stated in the Charter of the United Nations self-determination is a premise upon which friendly relations between nations and peace is based.

4. According to the 1970 Declaration on Friendly Relations, States are prohibited from using force to deny the right of self-determination of people. According to Antonio Cassese this ban on the use of force by States constitutes a novel departure from a general prohibition laid down in Article 2, subsection (IV), of the Charter of the United Nations. He further noted that the importance of this normative development should not be underestimated. This is a major achievement: it is the first time that international law has enjoined States to refrain from using force in their own territory against a part of their own population. It also should be added that States are duty bound to refrain from giving military or economic assistance to powers which are forcibly denying self-determination.

5. While international law prohibits the use of force by States in the denial of self-determination it clearly authorizes the liberation movements to use force as a last resort towards the realization of the right to self-determination. This right is also premised on the fundamental tenant enshrined in the preamble of the Universal Declaration of Human Rights that

"it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law." Also, this applies mutatis mutandis to ethnic and other groups. In the words of President John F. Kennedy, "Those who make peaceful revolution impossible will make violent revolution inevitable." It is also interesting to note the observation made by Antonio Cassese that States normally characterize the use of force by liberation movements as an act of terrorism. The Liberation Tigers of Tamil Eelam (LTTE) is a national liberation movement which is presently involved in armed conflict with the Government of Sri Lanka in order to realize the right of the Tamils of Sri Lanka to self-determination on the island of Sri Lanka.

6. The formation of the Tamil armed resistance movement was in response to the repression and violence of the Sinhala-dominated Sri Lankan Government. It should be analysed within the context of the historical development of the Tamil struggle for self-determination. The Tamil struggle for self-determination has an evolutionary history of nearly half a century. It is a history characterized by State repression and the ensuing resistance by Tamils. The political struggles in the early periods were peaceful, democratic, non-violent campaigns which later assumed the form of armed resistance as the military repression by the State intensified to genocidal proportions.

7. Following the independence of the island in 1948, Sinhala State repression against the Tamils began to manifest itself in earnest. Through discriminatory legislation and various other unconstitutional measures, successive Sinhala majority governments unleashed a systematic form of oppression that deprived the Tamils of their linguistic, educational and employment rights. In addition, the aggressive State-aided colonization by the Sinhalese of Tamil areas not only deprived the Tamils of their right to their historical lands, but also changed the national composition in the Tamil regions rendering them a minority in traditionally Tamil regions.

8. The Tamils took up arms when they were presented with no alternative; when peaceful forms of democratic political agitation were violently repressed; when constitutional paths and parliamentary doors were effectively closed. The event which climaxed the constitutional process to oppress the Tamil people was the new Republican Constitution of 1972 which was adopted at a constitutional conference outside the Parliament, without the support of elected Tamil representatives. By this unilateral action, which eliminated the protection for Tamils, included in the Soulbury Constitution, Sri Lanka broke the covenant which the Tamil people had made with the Sinhala people and the British when Sri Lanka became independent in 1948. The secular position of the State was changed in favour of Buddhism, the religion of the Sinhalese. Since 1961, after Satyagraha, a non-violent civil disobedience campaign by the Tamils, the Tamil areas came under army occupation.

9. The response of the Tamil people to these oppressive measures was to assert their inalienable right to self-determination. This right entails the freedom as a people to determine their own political status. In the 1977 election, the last free election held in the north-east, the Tamil nation gave an overwhelming mandate to establish the "independence of Tamil Eelam by peaceful means, direct action or by struggle".

10. The LTTE emerged as a response to these conditions; and with the emergence of the LTTE, the mode of the Tamil political struggle underwent a radical change. The armed struggle became effectively institutionalized as the political struggle of the Tamil people, and also as a measure of self-defence in the face of the brutalization of the Tamils by the Sri Lankan Government. The LTTE's armed struggle is based on a clearly defined political programme. The LTTE is committed to the position that the Tamils constitute themselves as a people or a nation and have a homeland, a well-defined contiguous territory embracing the Northern and Eastern provinces to be the historically constituted habitation of the Tamils. Since the Tamils have a homeland, a distinct language and culture, a unique economic life and a lengthy history extending over 3,000 years, they possess all the characteristics of a nation or a people.

11. Sri Lanka has consistently denied the right to self-determination of the Tamils and refused to recognize the Tamils as a people. By constitutional amendment Sri Lanka has prohibited even peaceful promotion of the Tamil demand for self-determination as unlawful. Furthermore, it has unleashed a full-fledged war against the Tamils to suppress their struggle for political independence. The Sri Lankan Government's action is clearly in violation of the 1970 Declaration on Friendly Relations and is illegal. And any power that gives military or economic assistance to perpetuate this war which is being conducted to deny the Tamils' right to self-determination, is also in complicity with this illegal war. The armed struggle of the Tamils is for the right to self-determination and is thus a legitimate political struggle for independence under international law.

12. In the war to suppress the Tamils, successive Sri Lankan Governments have used their security forces to commit massive human rights violations and war crimes against the Tamils. These violations have included extrajudicial killings, disappearances, torture, rape, mass arrests, detention, assault and harassment. In addition, there has been indiscriminate aerial bombing and heavy artillery shelling of civilians. The denial of food, fuel, electricity, medicine and other essential supplies through an economic embargo since 1990, as well as the intentional disruption and destruction of agricultural production, have been used as instruments of war. These actions have caused deaths, a great deal of suffering and undue hardships for the Tamil civilian population of the north and east. The army has even desecrated the final resting paces of Tamil freedom fighters in areas it invaded in 1995 and 1996.

13. It is gratifying that these violations are now receiving some recognition from the international community despite desperate cover-up efforts by the Government through censorship and denial of access to the north-east. Recent reports by the United States Department of State, the United States Committee for Refugees, the British Refugee Council and Amnesty International have noted the sharp deterioration in the human rights performance of the Government. Tamils will continue to be a "people in distress" unless the international community intervenes. The Sri Lankan Government continues to bomb and shell indiscriminately. The LTTE will continue to deter the Sri Lankan Government from committing such atrocities and other human rights offensive against the Tamils.